

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PETITION UNDER 37 CFR §1.181 TO INVOKE THE DIRECTOR'S SUPERVISORY AUTHORITY TO REVIEW AND WITHDRAWAL THE FINALITY OF AN OFFICE ACTION	Title: METHOD AND APPARATUS FOR ENABLING DISTRIBUTED SUBSCRIPTION SERVICES, SUPPLIES MAINTENANCE, AND DEVICE- INDEPENDENT SERVICE IMPLEMENTATION	
	Inventor(s):	Furst et al.
	Application No.:	10/686,751
	Filing Date:	October 16, 2003
	Confirmation No.	8683
	Examiner:	Arvin Eskandarnia
Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Art Unit:	2448
	Advisory Action:	March 23, 2010

Dear Sir:

Applicants petition the Director to invoke his supervisory authority and **review** the appropriateness of **the finality** of the Office Action that was mailed February 17, 2010 in regard to the above-referenced patent application.

The Applicants traversed the finality and requested withdrawal/reconsideration thereof throughout Applicants' Response E (AF), which was filed electronically on March 15, 2010, and in particular in traversals of the finality included on pages 2-9 of that document based on a lack of complete responsiveness (MPEP §707.07(F)) and based on the citation of new grounds of rejection (MPEP §707 and 37 CFR §1.104(c)(2)).

An Advisory Action mailed March 23, 2010, indicates that relying on a completely different portion of a reference (e.g., router 85 instead of processor 32 and memory 25; paragraphs 16 and 19 instead of Ref. numerals 52, 52a-52e) does not constitute reliance on new grounds of rejection. **However**, if that were true, MPEP §707 and 37 CFR §1.104(c)(2) and the indication therein that the examiner must cite the best references at his or her command and that when the reference is complex..., the particular part relied on must be designated as nearly as practicable would be without meaning. The Advisory Action does not comment on the arguments related to lack of complete responsiveness. It is from that March 23, 2010 finding, which the

applicants seek relief and request supervisory review.

The Finality of the Office Action of February 17, 2010 Is Premature

Section 707.07(F) of the MPEP asserts that in order to provide a complete application file history and to enhance the clarity of the prosecution history record, an Examiner **must** provide clear explanations **of all actions** taken by the Examiner during prosecution of an application. Additionally, the same section asserts that "where the Applicant traverses any rejection, the Examiner should, **if he or she repeats the rejection, take note of the Applicant's argument and answer the substance of it.**"

In the present case, the Office Action repeats the rejections of **claims 26-30, 32-35, 36-40 and 42-44** that were presented in the previous Office Action. While the Office Action takes note of **some** of the arguments presented in Applicants' Response D, which was filed electronically on November 9, 2009, it is respectfully submitted that **the present Office Action does not take note of all of those arguments and does not respond to the substance** of all of those arguments.

For example, with regard to the arguments presented on pages 7-9 of Applicants' Response D in support of **claims 27 and 28**, it is respectfully submitted that, at page 13 of the Office Action, the Response to Arguments provides only an improper omnibus (MPEP 707.07(d)) response that comments related to **claim 26** "also applies to the arguments regarding the limitations of **claims 27 and 28.**"

However, it is respectfully submitted that dependent **claims 27 and 28** recite additional details which are not recited in **claim 26**. Additionally, if the Office had responded to the arguments presented on pages 7-9, it is respectfully submitted that the Office would have more clearly understood that the analogies drawn by the Office between the cited aspects of Goldstein and the elements of **claims 26-28** do not hold. It is respectfully submitted that this inability to sustain the analogies would have caused the Office to issue a Notice of Allowance instead of the present final Office Action.

For at least the foregoing reasons, the finality of the present rejections is premature and withdrawal thereof is respectfully requested.

For example, with regard to **claim 27**, the Applicants pointed out that the cited discussion at lines 17-24 of paragraph 33 of routing a message to a terminal that is used by a customer service representative who is familiar with the design of the

apparatus **does not disclose or suggest** a second interchangeable device model as recited in **claim 27**.

Furthermore, Applicants pointed out that the depiction of a customer service system 55 and the indication at cited lines 1-5 of paragraph 33 of a customer service representative identifying a product or portion of a product from a product identifier **does not disclose or suggest** a device model agent reading a second interchangeable device model, or a device model agent that is operative to **read** a **second interchangeable device model** and access information in the at least one second respective unit of the second product.

It is respectfully submitted that by overlooking these arguments related to **claim 27**, the Office overlooked the interchangeable nature of the device model and the feature of the system and methods of the present application of the ability of a device model agent, a reusable software module, to provide communication services for a wide variety of devices in a family of devices. **Additionally**, the Office overlooks the distinction between providing a human customer service representative and a reusable software module in the form of a device model agent capable of reading a device model, for example, included in a device.

With regard to **claim 28**, the Applicants pointed out that the additional system element (i.e., at least one services provider that is operative to exchange information with a services host server is not anticipated by the depiction of providing a customer service representative, and discussion thereof provided by reference numeral 107 of Fig. 4 and lines 1-5 of paragraph 33 of Goldstein.

It is respectfully submitted that by failing to take note and/or respond to the substance of those arguments, the Office chose to overlook significant distinctions between the methods and systems of Goldstein and the methods and systems of the present application. In any event, the Office Action did not respond to the substance of these arguments. Accordingly, **the finality** of the Office Action **is premature**, and withdrawal thereof is respectfully requested.

With regard to **claim 29**, rather than take note of Applicants' arguments that the depiction of cited memory 25 and processing element 32 of Fig. 2 **does not disclose or suggest** the device model agent implemented as recited in **claim 29**, the Office Action makes reference to new grounds of rejection related to routing device 85. In this

regard, it is noted that Fig. 2 and the portions cited therein are of aspects of electrical apparatus 15 which is separate and remote from customer service 33 of Goldstein, which encompasses the routing device 85 of Goldstein.

It is respectfully submitted that since MPEP §707 and 37 CFR §1.104(c)(2) require that, "in rejecting claims for want of novelty or obviousness, the Examiner must cite the best references at his or her command and that when a reference is complex or shows or describes inventions other than that claimed by the Applicant, the particular part relied on must be designated as nearly as practicable."

This new reliance of the Office Action on aspects of a completely different component of the system of Figs. 1 and 2 of Goldstein in an effort to support the rejection of **claim 29** amounts to a new grounds of rejection. To assert otherwise is to completely ignore MPEP §707 and its reference to 37 CFR §1.104(c)(2) and to render that portion of the rules meaningless. It is respectfully submitted that if the Office presents a new justification for a rejection, fairness dictates that the Applicants be afforded the freedom provided by a non-final Action to respond to the new justification.

For at least the foregoing additional reasons, the **finality** of the present rejection is **premature** and withdrawal thereof is respectfully requested.

With regard to **claim 30**, the Response to Arguments again cites new grounds of rejection (i.e., paragraphs 16 and 19 instead of Fig. 1, Ref. 52a-52e and Fig. 3, Ref. 52)).

For at least the foregoing additional reasons, the **finality** of the present Office Action is **premature** and withdrawal thereof is respectfully requested.

Furthermore, paragraph 16 indicates that Goldstein generally pertains to an apparatus for enabling users to quickly and efficiently contact and provide information to a customer services representative. Allegedly, as a result, the user is able to quickly and easily receive advice on the operation or configuration of the apparatus. It is respectfully submitted that paragraph 16 of Goldstein **does not disclose or suggest** the system of **claim 26** further including an application server that is operative to receive application software modules from at least one services provider and make the software application modules available for transmission to and installation in the at least one respective device model agent for performing new services in conjunction with the at least one respective unit, as is recited in **claim 30**.

Newly cited paragraph 19 provides an overview of Fig. 2 and simply indicates that apparatus 15 includes control logic 21 which can be implemented in software, hardware or a combination thereof and that in a preferred embodiment as illustrated in Fig. 2, the control logic 21, along with its associated methodology, is implemented in software and stored in memory 25.

It is respectfully submitted that paragraphs 16 and 19, **contrary to the assertions of the Response to Arguments**, do not disclose "where the route analysis and correction of software issue incorporate installing a fix or patch or upgrade for the system across the network", and this assertion represents a **clear error** of the Office Action. **Support for this assertion is respectfully requested.**

Since the grounds of rejection have changed, the Applicants are entitled to a full opportunity to respond to the new grounds and have the response fully considered. Therefore, **the finality** of the Office Action is **premature**.

With regard to **claims 31 and 41**, the Response to Arguments asserts that the secure socket layer of Freed is connected between a client and a server "that can be the device model agent as mentioned in the claims".

However, it is respectfully submitted that nothing in cited lines 2-6 of paragraph 42 of Freed discloses or suggests the device model agent of **claim 26** or that such a device model agent is implemented as a device proxy or implemented in a device proxy within an application server. In this regard, it is respectfully submitted that the **Response to Arguments** appears to be applying **new grounds of rejection** based on **impermissible hindsight reasoning** based on information **gleaned only from the present application.**

Accordingly, again, the subject matter claimed in the present application is not anticipated or obvious in light of Goldstein and Freed.

Additionally, it is respectfully submitted that the Response to Arguments **does not take note of** or **answer the substance of the Applicants'** argument (MPEP §707.07(F)) that while the cited lines include the word --proxy-- and indicate that a secure socket layer device acts as a proxy **for one or more servers**, that **does not disclose or suggest** that a device model agent is implemented as a device proxy or implemented in a device proxy within an application server or that the Office has not met its burden of presenting a *prima facie* case of obviousness.

For at least the foregoing additional reasons, the **finality** of the present Office Action is **premature**.

With regard to **claim 32**, the Response to Arguments submits that lines 16-20 of paragraph 28 of Goldstein discloses that the terminals include communication interface that can be modem or other type of conventional transmitter or receiver that would allow terminals to exchange data with the network. Allegedly, it is also mentioned that the communication interface may be wireless or wired.

However, it is respectfully submitted that this **does not take note of or address the substance** of the assertion (MPEP §707.07(F)) of the Applicants that the cited portion of Goldstein **does not disclose or suggest** that a customer service terminal is not an application programming interface. Moreover, this Response to Arguments **does not take note of or respond to the substance** of the assertion that the cited portion of paragraph 28 does not disclose or suggest that the customer interface terminal is operative to select one or more communication means from an available set of communication means.

For at least the foregoing additional reasons, the **finality** of the present Office Action is **premature** and Goldstein **does not disclose or suggest** the subject matter of the claims in the present application.

With regard to **claim 33**, the Office Action cites **new grounds of rejection** related to paragraphs 22 and 14 where the previous rejection was based on paragraph 41 (see page 9 of the Office Action of August 10, 2009).

For at least the foregoing reasons, the **finality** of the present Office Action is **premature** (MPEP §707; 37 CFR §1.04(c)(2)).

Additionally, the Response to Arguments section stipulates that the particular protocols recited in **claim 33** are not mentioned by Goldstein. In this regard, the Response to Arguments appears to assert **new grounds of rejection, based on impermissible hindsight** reasoning, that since Goldstein does mention a modem, that is enough to make the use of the particular protocols recited in **claim 33** obvious.

Even if such reasoning were appropriate, it is respectfully submitted that the assertion misses the point of what is recited in **claim 33**. **Claim 33** recites the system of **claim 32** wherein the application programming interface supports communication via at least ten listed protocols. It is respectfully submitted that Goldstein **does not**

disclose or suggest an application programming interface. Moreover, Goldstein **does not disclose or suggest** an application programming interface that is so flexible as to support at least the ten listed protocols recited in **claim 33**.

Since the grounds of rejection have changed, the Applicants are entitled to a full opportunity to respond to the new grounds and have the response fully considered. Therefore, **the finality** of the Office Action is **premature**.

For at least the foregoing additional reasons, the **finality** of the present Office Action is **premature** and the subject matter recited in the claims of the present application is **not anticipated and is not obvious** in light of Goldstein.

With regard to **claim 34**, where the previous Office Action cited lines 5-10 of paragraph 47, the Response to Arguments asserts that Goldstein discloses that customer service terminal diagnoses and corrects optional errors or problems with apparatus that can incorporate installing a new software or program into the apparatus of the client device and relies on **new grounds of rejection** allegedly found in paragraphs **16 and 19** to support this assertion.

However, **claim 34** recites: the system of **claim 26** wherein the device model agent is further operative to at least one of: add a new service received from an applications server to the device model agent, start a service running and stop a service. It is respectfully submitted that paragraph 16 indicates that the invention of Goldstein generally pertains to an apparatus for enabling users to quickly and efficiently contact and provide information to a customer service representative, thereby enabling the customer service representative to diagnose and possibly correct operational errors or problems with the apparatus. As a result, the user is able to quickly and easily receive advice on the operation or configuration of the apparatus. Paragraph 16 does disclose or suggest a device model agent. Paragraph 16 **does not disclose or suggest** an applications server. Paragraph 16 **does not disclose or suggest** that a device model agent is operative to add a new service received from an applications server to the device model agent. Paragraph 16 **does not disclose or suggest** a device model agent is operative to start a service running or to stop a service.

Paragraph 19 indicates that Fig. 2 depicts a more detailed view of the apparatus 15. As shown by Fig. 2, the apparatus 15 includes control logic 21 that controls the operation of the apparatus 15. The control logic can be implemented in software,

hardware or a combination thereof. In the preferred embodiment, as illustrated by way of example in Fig. 2, the control logic along with its associated methodology is implemented in software and stored in memory 25.

It is respectfully submitted that nothing in paragraph 19 discloses a device model agent. Nothing in paragraph 19 discloses or suggests an application server. Nothing in paragraph 19 discloses a device model agent is further operative to add a new service received from an application server to the device model agent. Nothing in paragraph 19 discloses a device model agent is operative to start a service running or to stop a service.

Since the grounds of rejection have changed, the Applicants are entitled to a full opportunity to respond to the new grounds and have the response fully considered. Therefore, **the finality** of the Office Action is **premature**.

For at least the foregoing reasons, the present Office Action is **not completely responsive**, the present Office Action includes **new grounds of rejection** that were not necessitated by the Applicants' amendment or information disclosure statement and, therefore, the **finality** of the present Office Action is **premature** and withdrawal thereof is respectfully requested.

☒ The Applicants believe no fee is required for filing this petition. However, if a fee is due, the Commissioner is hereby authorized to charge any filing or prosecution fees which may be required, under 37 CFR 1.16, 1.17, and 1.21 (but not 1.18), or to credit any overpayment, to Deposit Account 24-0037.

Respectfully submitted,

Fay Sharpe LLP

4/6/10
Date

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence (and any item referred to herein as being attached or enclosed) is (are) being transmitted to the USPTO by electronic transmission via the EFS Web on the date indicated below.

April 6, 2010
Date

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